

(O-98-85)

ORDINANCE NUMBER O-18471 (NEW SERIES)

ADOPTED ON MARCH 2, 1998

AN ORDINANCE OF THE CITY OF SAN DIEGO,  
SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY  
OF SAN DIEGO ORDINANCE NO. O-18443 (N.S.) ENTITLED  
“AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN  
DIEGO AUTHORIZING AND APPROVING THE EXECUTION  
AND DELIVERY OF CERTIFICATES OF PARTICIPATION,  
MAKING POSSIBLE THE EXPANSION OF THE SAN DIEGO  
CONVENTION CENTER,” FOR THEIR APPROVAL OR  
REJECTION AT THE MUNICIPAL ELECTION OF JUNE 2,  
1998

WHEREAS, the City Council on November 25, 1997 adopted Ordinance No. O-18443 (N.S.) entitled “An Ordinance of the Council of the City of San Diego Authorizing and Approving the Execution and Delivery of Certificates of Participation, Making Possible the Expansion of San Diego Convention Center”; and

WHEREAS, on December 26, 1997, a referendary petition requesting the City Council to repeal or rescind Ordinance No. O-18443 (N.S.), or submit Ordinance No. O-18443 (N.S.) to the registered voters of the City for their approval or rejection was filed in the office of the City Clerk; and

WHEREAS, the City Clerk has certified that the referendary petition contains the requisite number of valid signatures and is in proper form, and he has presented the petition, with his certification attached, to the City Council on February 2, 1998; and

WHEREAS, on February 2, 1998 the City Council adopted Resolution No. R-289702, declaring its intent to submit Ordinance No. O-18443 (N.S.) to the registered voters of the City for their approval or rejection on or before January 2, 1999; and

WHEREAS, by Ordinance No. O-18470, adopted on March 2, 1998, the City Council called a Municipal Election to be held in the City on June 2, 1998, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. The Council of the City of San Diego hereby submits to the qualified voters of the City at the Municipal Election on June 2, 1998, a proposition to approve Ordinance No. O-18443 (N.S.).

Section 2. Pursuant to California Elections Code sections 13103(c) and 13303(a), the text of Ordinance No. O-18443 (N.S.) and a summary of the attachments referred to in Ordinance No. O-18443 shall be published as follows in the sample ballot:

### **PROPOSITION**

#### **TEXT OF ORDINANCE**

ORDINANCE NUMBER O-18443 (NEW SERIES)

ADOPTED ON November 25, 1997

AN ORDINANCE OF THE COUNCIL OF THE  
CITY OF SAN DIEGO AUTHORIZING AND  
APPROVING THE EXECUTION AND  
DELIVERY OF CERTIFICATES OF PARTICI-  
PATION, MAKING POSSIBLE THE  
EXPANSION OF THE SAN DIEGO  
CONVENTION CENTER

WHEREAS, the existing Convention Center is the  
cornerstone of San Diego's visitor industry, is a major producer of  
employment, and infuses \$580 million annually into the regional  
economy of the San Diego region; and

WHEREAS, the City's financial obligation towards the construction of the expansion to the Convention Center will be paid for by taxes permitted to be collected from persons staying in hotels; and

WHEREAS, numerous large conventions cannot be accommodated because of the size limitations of the existing center and are being lost to Anaheim, San Francisco, Las Vegas and other competing cities which have larger convention centers; and

WHEREAS, the proposed expansion of the Convention Center will increase the regional economic benefit to \$1 billion and create 4,700 jobs for our local economy; and

WHEREAS, on June 21, 1994, the City of San Diego ("City") and the San Diego Unified Port District ("District") entered into a Memorandum of Understanding respecting the expansion of the San Diego Convention Center ("Expansion Project"); and

WHEREAS, to accomplish the construction of the Expansion Project, the City entered into certain agreements with the Convention Center Expansion Financing Authority ("Financing Authority") whereby the District would lease the existing Convention Center and the Expanded Center to the Financing Authority, the Financing Authority would issue lease revenue bonds to finance the construction of the Expansion Project and would award a construction contract, and the Financing Authority would

then lease the Existing Center and Expanded Center to the City for a consideration sufficient to pay the debt financing on the lease revenue bonds; and

WHEREAS, the lease revenue financing mechanism, and the ability of the Financing Authority to utilize that mechanism, have been challenged in court by Richard Rider and others (“Rider v. City”); and

WHEREAS, the California Supreme Court has granted Rider’s petition for review and will decide the merits of Rider v. City, with an argument date not yet set by the Court; and

WHEREAS, the delay occasioned by Rider v. City is causing the cost of the Expansion project to rise at an estimated rate of \$750,000 per month; and

WHEREAS, the City and the District still desire to proceed with the Expansion Project, and have agreed upon an alternative financing mechanism to accomplish this end; and

WHEREAS, it is the express intention of the City Council that any documents attached as Exhibits hereto, incorporated herein by reference or on file in the Office of the City Clerk, pursuant to state law comprise, together with the text of this Ordinance, the full action of the Council and are necessary for a full understanding of the Council’s actions; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1.     Authorization and Approval of the Certificates. The City hereby has determined to authorize and approve the execution and delivery of Certificates of Participation (San Diego Convention Center Expansion) Series 1998A (the "Certificates"), in an aggregate principal amount not to exceed \$210,000,000, said principal amount to provide funds to finance the construction of the Expansion Project as more particularly described below.

Section 2.     Description of the Project. The Expansion Project to be financed by the execution and delivery and sale of the Certificates will be located on real property owned by the District. The District has agreed to lease to the City : (i) the existing San Diego Convention Center, and (ii) the Expansion Project, including the real property to be developed in connection with the Expansion Project, together with improvements thereon (the "Facilities"), pursuant to the terms of a Facility Lease (as described below).

Section 3.     Source of Revenue For Payment of Certificates. The anticipated source of revenue for payment of the Certificates hereby authorized is the base rental payments to be made by the City to the District under the Convention Center

Facility Lease (the “Facility Lease,” as more particularly described below).

Section 4. Additional Source of Revenue for Payment of Certificates. Another source of revenue for the payment of the Certificates will be support payments to be made by the District to the City under a Support Agreement, tentatively dated as of March 5, 1996 (the “Support Agreement”) between the District and the City. Pursuant to the Support Agreement, the District will pay to the City the sum of \$4.5 million each year for eighteen (18) consecutive years.

Section 5. Authorization and Approval of Facility Lease. The form and content of the Facility Lease, tentatively dated as of January 1, 1998, respecting base rental payments to be made by the City with respect to the Certificates, a copy of which is before this Council and on file in the office of the City Clerk as Document No. OO-18443-1, is hereby approved. The City Manager is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the Facility Lease in substantially the form presented to and considered at this meeting, and the City Clerk of the City is authorized to attest thereto, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, and with such

other changes that may be required by nationally recognized bond counsel in order to maintain the exclusion from gross income of the interest evidenced and represented by the Certificates, such approval to be conclusively evidenced by the City Manager's execution and delivery of the Facility Lease, which form of Facility Lease is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 6.     Authorization and Approval of Trust Agreement. To provide for the execution and delivery of the Certificates, the City hereby authorizes and approves of the execution, delivery and performance of the trust agreement related to the execution and delivery of the Certificates, tentatively dated as of January 1, 1998 (the "Trust Agreement"), by and among the City, the District and the Trustee to be named therein (the "Trustee"), in substantially the form presented to and considered at this meeting a copy of which is before this Council and on file in the office of the City Clerk as Document No. OO-18443-2, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, and with such other changes that may be required by nationally recognized bond counsel in order to maintain the exclusion from gross income of the interest evidenced and represented by the Certificates, such approval to be

conclusively evidenced by the City Manager's execution and delivery of the Trust Agreement, which form of Trust Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 7.     Authorization and Approval of Assignment Agreement. The City hereby approves the form of Assignment Agreement related to the execution and delivery of the Certificates, tentatively dated as of January 1, 1998 (the "Assignment Agreement"), by and between the District and Trustee in substantially the form presented to and considered at this meeting as Exhibit A.

Section 8.     Amendment of the First Amended and Restated Management Agreement. The existing Convention Center is currently operated by the City through a Convention Center Management Agreement between the City and the District. A First Amended and Restated Management Agreement was approved by the City Council and the District's Board of Port Commissioners on March 5, 1996. The parties have now agreed to enter into a 1997 Management Agreement (the "1997 Management Agreement"), which shall supersede the First Amended and Restated Management Agreement.

Section 9.     Authorization and Approval of 1997 Management Agreement. The form and content of the 1997



Management Agreement between the City and the District, whereby the City will manage, operate and maintain the existing and expanded Convention Center, a copy of which is before this Council and is on file in the office of the City Clerk as Document No. OO-18443-3, is hereby approved. The City Manager is hereby authorized and directed, for and in the name of and on behalf of the City, to execute and deliver the 1997 Management Agreement in substantially the form presented to and considered at this meeting, and the Clerk of the City is authorized to attest thereto, with such additions and changes therein as the City Manager shall approve as being in the best interests of the City, and as is approved as to form by the City Attorney, such approval to be conclusively evidenced by the City Manager's execution and delivery of said 1997 Management Agreement, which form of said 1997 Management Agreement is hereby in all respects approved and incorporated by reference and made a part hereof.

Section 10. Delegation of Selection of Underwriters.

The City Manager is hereby authorized to select a group of investment banking firms to act as the underwriters of the Certificates.

Section 11. Approval of Form of Certificate Purchase Contract. Subject to the selection of underwriters, the form of Certificate Purchase Contract presented to this meeting is hereby

approved, and the City Manager is hereby authorized and directed to execute the same for and in the name and on behalf of the City, with such changes therein as the City Manager shall approve as being in the best interests of the City, and as approved as to form by the City Attorney, such approval to be conclusively evidenced by his execution and delivery thereof; provided, however, that the aggregate principal amount of Certificates which may be issued shall not exceed \$210,000,000.

Section 12. Status of Lease Revenue Financing for the Convention Center Expansion. Except as expressly provided herein, nothing in this ordinance, or in the documents and actions authorized and approved hereby, supersedes or nullifies the actions taken by the Council in adopting Ordinance Nos. O-18270 and O-18271, authorizing and approving the use of lease revenue financing for the Expansion Project. It is the intent of the Council that if the California Supreme Court rules in favor of the City in Rider v. City, then the City shall have the option, at its discretion, to finance the Expansion Project through the lease revenue mechanism already approved by O-18270; provided, however, that notwithstanding the provisions in O-18270 regarding a negotiated sale, the City Manager be and he is hereby authorized: a) to make such changes and amendments to the Certificate Purchase Contract, herein approved, as are necessary to proceed with a

negotiated sale of the lease revenue bonds, and b) to use the underwriter selected for the negotiated sale of the Certificates, or alternatively to select another underwriter, for the sale of the lease revenue bonds.

Section 13.     Ratification of Actions    . All actions heretofore taken by any officers, employees or agents of the City with respect to the execution, delivery or sale of the Certificates, or in connection with or related to any of the agreements or documents referenced herein, are hereby approved, confirmed and ratified.

Section 14.     Designated Officer; General Authorization    . The City Manager of the City or his designee, any Deputy City Manager of the City, the City Attorney, any Deputy City Attorney, the City Clerk and any Assistant City Clerk of the City (each, a "Designated Officer"), and each of them acting alone or together, are hereby authorized and directed, for and in the name of and on behalf of the City, to take such actions, and to execute such documents and certificates as may be necessary to effectuate the purposes of this Ordinance.

Section 15.     Notice of Public Hearing    . The City Clerk shall cause notice of the public hearing to be held on November 10, 1997, at 10:00 a.m. at the regular meeting place of the City Council of the City, on the approval of the Facility Lease, Trust Agreement

and 1997 Management Agreement, and the execution and delivery of the Certificates, to be published at least ten (10) days in advance of such public hearing in the San Diego Daily Transcript, a daily newspaper of general circulation, published and circulated in the City of San Diego, as required by Section 99 of the City Charter.

Section 16. Notice of Adopting of Ordinance. The City Clerk is hereby directed to cause publication of notice of the adoption of this Ordinance for five (5) consecutive days in the San Diego Daily Transcript, a daily newspaper of general circulation published and circulated in the City/County of San Diego, as required by California Government Code Section 6040.1, within fifteen (15) days from the passage hereof pursuant to California Government Code Section 6547.2.

Section 17. Referendum; Effective Date. This Ordinance is subject to the provisions for referendum contained in Section 27.2601 *et seq.* of the San Diego Municipal Code. Subject to those provisions, this Ordinance shall take effect and be in force thirty (30) days from the date of its adoption and, prior to the expiration of fifteen (15) days from the passage hereof, the City Clerk shall cause this Ordinance to be published at least once in the San Diego Daily Transcript, a daily newspaper of general circulation, published and circulated in the City of San Diego.

Section 18. Title Insurance. The City Manager is hereby authorized to make necessary arrangements with an appropriate title insurance company to issue a title insurance bidder with respect to land that may become the subject of the Facility Lease and to execute any agreement required for retention of such title insurance company or companies.

Section 19. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

### **SUMMARY OF ATTACHMENTS**

The attachments to Ordinance No. O-18443 will provide for one method of financing the expansion of the San Diego Convention Center. Under this proposed financing, the City will lease the Convention Center from the San Diego Unified Port District, and then sell \$210 million of certificates of participation to investors. Each certificate will entitle the investor to a share of the lease revenues generated under the lease. The sale of the certificates will provide the funds necessary to accomplish the expansion. Payments each year to the investors on the certificates will be made from the annual lease payments made by the City to the Port District. The Port District will agree to assign these lease payments to the investors. The City Council must decide every year whether to make the lease payment or terminate the lease;

termination of the lease would release the City from the legal obligation to make lease payments in future years. The Port District will assist in paying the cost of the expansion by contributing to the City \$4.5 million per year for eighteen years. Full payment of the certificates is expected to take thirty years. In addition, the City and the Port District will enter into a new Management Agreement covering the same period as the Facility Lease.

Section 3. By Resolution No. R-289702, the City Attorney has been directed to prepare an impartial analysis of the ballot proposition concerning Ordinance No. O-18443 (N.S.). Pursuant to Elections Code section 9280, the Registrar of Voters shall include the following notice in the sample ballot immediately after the City Attorney's impartial analysis:

“The above statement is an impartial analysis of Ordinance No. O-18443 (N.S.). If you desire a copy of the Ordinance No. O-18443, please call the elections official's office at (619) 533-4025 and a copy will be mailed to you at no cost. Alternatively, the full text of the ordinance will be available at the City's Internet Website, <http://www.sannet.gov>.”

Section 4. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set forth in Section 5 of this ordinance.

Section 5. On the ballots to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

<b>PROPOSITION A. APPROVAL OF ORDINANCE NO. O-18443 (N.S.).</b> Shall Ordinance No. O-18443 (N.S.) be approved to allow the expansion of the San Diego Convention Center?	<b>Yes</b>	
	<b>No</b>	

Section 6. An appropriate mark placed in the voting square after the word “YES” shall be counted in favor of the adoption of the proposition. An appropriate mark placed in the voting square after the word “NO” shall be counted against the adoption of the proposition.

Section 7. The City Clerk shall cause this ordinance to be published once in the official newspaper. No other notice of the election on this proposition need be given.

Section 8. Pursuant to Sections 16 and 17 of the Charter, this ordinance relating to elections shall take effect on March 2, 1998, being the day of its introduction and passage.

APPROVED: CASEY GWINN, City Attorney

By \_\_\_\_\_  
Theresa C. McAteer  
Deputy City Attorney

TCM:rc  
2/26/98  
Or.Dept:Clerk  
O-98-85